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EDWARD J. MARKEY
7TH DISTRICT, MASSACHUSETTS

Congress of the United States

House of Representatives Washington, DC 20515–2107

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2108 RAYBURN HOUSE OFFICE BUILDING WASHINGTON, DC 20515-2107 (202) 225-2836

DISTRICT OFFICES:

5 HIGH STREET, SUITE 101 MEDFORD, MA 02155 (781) 396–2900

188 CONCORD STREET, SUITE 102 FRAMINGHAM, MA 01702 (508) 875-2900

http://markey.house.gov

Mr. Steve Ballmer Chief Executive Officer Microsoft One Microsoft Way Redmond, WA 90852

Dear Mr. Ballmer:

According to a recent story in *The New York Times* ("As Microsoft Shifts Its Privacy Rules, an Uproar is Absent", October 19, 2012), Microsoft put in a place last week a new policy that expands the ability of the company to collect and use personal information from consumers using its free Web-based services, including e-mail, search, and instant messaging. The new policy also allows for targeting advertising to users of these services. I am concerned about the privacy and security implications of Microsoft's new policy of aggregating information about consumers across a suite of Microsoft services, stitching together detailed, in-depth consumer profiles. Such collection may be in Microsoft's corporate interest, but not necessarily consumers' interest.

The New York Times story explains that the new policy, called the "Services Agreement", permits Microsoft to "analyze customer content from one [of] its free products and use it to improve another service – for example, taking information from messages a consumer sends on Windows Live Messenger and using it to improve messaging services from Xbox." According to the media story, "that kind of sharing of information between products would not have been allowed under [previous] Microsoft policies, which limited the use of data collected under one of its products to that product alone." The new Services Agreement impacts Microsoft's free, Web-based products, including Hotmail and Bing. Software programs, including Outlook e-mail and Internet Explorer – which consumers and corporations purchase and are individually loaded onto computer hard drives – are not covered.

This announcement follows important and positive steps Microsoft took earlier this year when the company announced that its Internet Explorer 10 browser will utilize a default 'Do Not Track' setting. However, Friday's announcement leaves many questions unanswered about whether and to what extent consumers will be able to opt-in to information sharing across Microsoft's many Web-based products, or whether they will have to opt out of such sharing or whether they will have no choice at all in the matter. I have long endorsed a standard that allows consumers to affirmatively decide whether to permit collection of their personal information and targeting of advertisements.

As a co-Chair of the Congressional Bipartisan Privacy Caucus, I request Microsoft's answers to the following questions:

- 1. Prior to the installation of the Service Agreement last week, please explain how Microsoft shared information among its Web-based products.
 - a. What information did the company collect about its users?
 - b. What information did Microsoft share across its products?
 - c. For what purposes was this information shared?
 - d. How long was the information retained?
- 2. Please list all of Microsoft's Web-base products that are impacted by the new Service Agreement.
- 3. Under the new Service Agreement, please specify how Microsoft plans to share information between Web-based products.
 - a. What information will the company collect about its users?
 - b. What information will Microsoft share across its products?
 - c. For what purpose will this information be shared?
 - d. How long will the information be retained?
- 4. The news story referenced above explains that the new policy permits targeted advertising. However, "Microsoft has promised not to do so in blog posts and emails informing its customers about the change, but not in the formal policy."
 - a. To clarify, will Microsoft use the information that is shared across Webbased products to target advertisements? If yes, how? If not, why is this policy not included in the formal Services Agreement?
 - b. Do existing privacy policies and the new Service Agreement permit the information that is shared between products to be used for targeting advertising purposes?
- 5. Will consumers be provided a choice to opt-in to information sharing between Microsoft's Web-based products? If yes, please explain how. If not, why not? If not, will the company allow users to opt-out of information sharing across all covered products, or on a product by product basis? If yes, please explain. If not, why not?
- 6. How and when did the company notify consumers about the changes contained in the Service Agreement?
- 7. According to the news story, the company's privacy policies "include a 4,000-word main policy and at least 16 related product-specific privacy policies." Does the privacy policy explain how the new Service Agreement will impact user privacy? If yes, where? If not, why not?

- 8. Will consumers' decision to change or not change the default setting in Internet Explorer 10 impact how the company shares consumers' personal information across its Web-based products?
- 9. Under the Service Agreement, will information collected about children and teens be shared across Web-based products? Will children and teens be offered different options to either opt-in or opt-out of cross-sharing of personal data?

Thank you for your attention to this important manner. Please provide a response in writing no later than November 13, 2012. If you have questions, please have a member of your staff contact Joseph Wender at 202-225-2836.

Sincerely,

Edward J. Markey

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